

Formal Action #5765

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,

Plaintiff,

v.

WHITNEY LEADERSHIP GROUP, INC.

and RUSSELL A. WHITNEY,

Defendants.

COMPLAINT

This civil action is brought in the name of the State of Tennessee, by and through Charles W. Burson, Attorney General and Reporter ("Attorney General"), pursuant to Tenn. Code Ann. §§ 47-18-108(a) and 47-18-114, at the request of the Division of Consumer Affairs of the Tennessee Department of

Commerce and Insurance ("Division"). The Division has reason to believe that the Defendants named herein have violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-104(a), (b)(5), (b)(12), (b)(21), (b)(27) and § 47-18-120 and that this action is in the public interest.

I. JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to the provision of Tenn. Code Ann. § 47-18-108. Venue is proper in Davidson County because it is a county in which Defendants conduct or have conducted business. See Tenn. Code Ann. § 47-18-108(a)(3). The Defendants have not been provided with ten (10) days notice that such proceedings are contemplated as set forth in Tenn. Code Ann. § 47-18-108 because the public interest demands that the ten day notice period be waived. (See Exhibit 1, Affidavit and Verification of Mark Williams, Director of the Division of Consumer Affairs).

II. PARTIES

2. Pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1) and 47-18-114, this action is commenced in the name of the State of Tennessee, by the Attorney General, Charles W. Burson, at the request of the Division. (See Exhibit 1, Affidavit and Verification of Mark Williams, Director of the Division of Consumer Affairs).
3. Defendant, Russell A. Whitney (hereafter Whitney), is responsible for the conduct at issue, namely placing an advertisement in the Tennessean, more fully described herein. On information and belief, Whitney and/or the company he represents is located in the State of Florida. On information and belief, Defendant Whitney Leadership Group, Inc., (hereafter W.L.G.), a corporation headquartered in Florida, is also responsible for the placing of the advertisement and program described in this Complaint.

III. FACTUAL ALLEGATIONS

4. On or about December 9, 1996, Defendants caused to be published an advertisement in The Tennessean newspaper. The Tennessean is a daily newspaper that is widely distributed from Nashville throughout the State of Tennessee. An identical ad was also published in The Nashville Banner, beginning on December 9, 1996.
5. The advertisement at issue, a copy of which is attached to this Complaint as Exhibit 2, promotes a seminar to be hosted and taught by Defendant Whitney. According to the advertisement, the Defendants intend to conduct a "wealth-building program" to instruct consumers about a money-making opportunity.
6. The advertisement is headlined "Millionaire Swears Under Oath He Can Show Any Nashville Area Resident How To Get Rich In A Year." Defendant Whitney, who is identified in the advertisement as a "self-made millionaire" has not in fact made any such statement under oath. Mr. Whitney has informed the State that this claim is simply "advertising language." In addition, Mr. Whitney has been unable to provide substantiation that he is a millionaire or that he has become a millionaire by using the principles

he will teach in his wealth-building seminar.

7. Defendants' advertisement promises that each individual will learn how to obtain a credit line of \$60,000. What Defendants actually teach is how to apply for a secured credit card with a \$1,000 to \$60,000 limit.

8. Defendants' advertisement promises that each individual will learn how to "become rich in a year," "gain security, freedom and wealth," "make serious money with only part-time effort," "turn debt into cash," "create \$1,500/month in passive monthly income," and "make a fortune" with a computer. Defendants are unable to substantiate any of these claims. In fact, Mr. Whitney has informed the State that in making his claim that he can show any Nashvillian how to become "rich" in a year, he did not necessarily mean that anyone would become "rich" financially, but "rich" in a spiritual sense or as otherwise defined by the consumer's financial goals and circumstances.

9. The Defendants' advertisement also utilizes a testimonial from a person who purportedly made \$115,000.00 from one transaction using the Defendants' program. This testimonial presents a very unusual transaction, and is not typical of what participants in Defendants' seminar can expect.

10. Defendants' advertisement also states that consumers will receive a gift worth more than \$100 and that there will be drawings throughout the seminar for other prizes. The advertisement fails, however, to identify the prize worth more than \$100.00 or to give the verifiable retail price, a clear and conspicuous identification of the prizes, the odds of winning or the eligibility requirements for any prizes offered. For example, in order to be eligible for any prizes or gifts, seminar participants must listen to a sales pitch for Defendant Whitney's book and related products and services, and for an unrelated multi-level marketing plan of which Mr. Whitney is a part.

11. On information and belief, the Defendants aired an infomercial containing misrepresentations and misleading content similar to that in the print advertisements on a Nashville television station on December 10, 11, and 12, 1996.

IV. VIOLATIONS OF THE LAW

12. Defendants' solicitation of consumers to attend a seminar at which they will be asked to purchase goods and services, as alleged herein, constitutes "trade", "commerce" and/or a "consumer transaction" and the offering of or providing of "goods" and/or "services" as defined in Tenn. Code Ann. §§ 47-18-103(5), (8) & (9).

13. All of the acts and practices engaged in and employed by the Defendants, as alleged herein, are "unfair or deceptive acts or practices affecting the conduct of any trade or commerce" in Tennessee, which are declared unlawful by Tenn. Code Ann. § 47-18-104(a).

14. By implying that a money-making opportunity will result in a specified level of success or profit

without substantiation for such claims, Defendants have represented or implied that goods or services have characteristics or benefits that they do not have, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), and (b)(27).

15. By offering a money-making opportunity and including an offer of financing for transactions in exchange for a portion of the profits, when the overwhelming majority of consumers will not be allowed to take advantage of the offer, the Defendants have represented or implied that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(12) and (b)(27).

16. By utilizing a testimonial in promoting this money-making plan without disclosing that the success claimed is atypical or extraordinary, Defendants have represented or implied that goods or services have characteristics or benefits that they do not have, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), and (b)(27) and 16 C.F.R. § 255.2(a).

17. By failing to make disclosures required by Tenn. Code Ann. § 47-18-120 in the initial solicitation for his seminar, Defendants have violated Tenn. Code Ann. §§ 47-18-104(a) and 47-18-120.

18. By making "free" or similar offers without setting forth clearly and conspicuously at the outset of these offers all the terms, conditions and obligations upon which receipt and retention of the "free" items are contingent, the Defendants violated Tenn. Code Ann. § 47-18-104(a), (b)(5) and (b)(12) and 16 C.F.R. § 251.1(c).

19. By purporting to provide, in essence, a sworn guarantee that Defendant Whitney can show any Nashville area resident "how to get rich in a year" the Defendants have represented or implied that goods or services have characteristics or benefits they do not have, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), and (b)(27).

20. By using statements in their advertisement that gives a false impression of the grade, quality, quantity, value, usability or origin of the goods or services offered or which otherwise misrepresent the goods or service actually being offered, the Defendants have engaged in a scheme to "bait" consumers to their workshop and then "switch" them from the advertised goods and services in violation of Tenn. Code Ann. § 47-18-104(b)(21).

21. As a result of the violations of the Act alleged herein, consumers and/or persons, the exact number of whom is presently unknown to Plaintiff, may have and/or have suffer(ed) ascertainable losses of money or property.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, THE STATE OF TENNESSEE PRAYS:

- (1) That this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 20-13-101, 47-18-108, and 47-18-116.
- (2) That process issue and be served upon Defendants requiring them to appear and answer this Complaint.
- (3) That this Court adjudge and decree that Defendants have engaged in the aforesaid acts or practices, which are violative of the Tennessee Consumer Protection Act and other applicable laws.
- (4) That this Court temporarily and permanently enjoin Defendants from engaging in the aforesaid acts or practices, which are violative of the Tennessee Consumer Protection Act.
- (5) That this Court adjudge and decree that the Defendants are liable to the State for the reasonable costs and expenses of the investigation and prosecution of the Defendants' actions, including attorneys' fees, as provided by Tenn. Code Ann. § 47-18-108(b).
- (6) That this Court make such orders or render such judgments as may be necessary to restore to any consumer or other person any ascertainable losses (including statutory interest) suffered by reason of the alleged violations of the Tennessee Consumer Protection Act.
- (7) That this Court adjudge and decree that the Defendants pay civil penalties of not more than one thousand dollars (\$1,000.00) per violation to the State as provided by Tenn. Code Ann. § 47-18-108(b).
- (8) That all costs in this cause be taxed against Defendants.
- (9) That this Court grant Plaintiff such other and further relief as this Court deems just and proper.